For the guidance of magistrates and prosecuting officers, I will set out the procedure that should be adopted in proving a case of this nature before the courts:

(a) The vehicle in question can only be stopped and taken to the weigh-bridge by an officer duly authorised under section 53 of the Road Traffic Ordinance.

(b) The duty of this officer does not extend to the weighing of a vehicle.

(c) The weighing of the vehicle must be done by the public servant in charge of the weigh-bridge and not by any other person.

(d) The certificate to be issued under section 143(7) can only be issued if the weigh-bridge has been examined and found accurate by an Inspector of Weights and Measures and after the weighing of the vehicle has been done by the public servant in charge of the weigh-bridge himself.

The law relating to the weighing of motor vehicles is a strict law and must be strictly complied with. No amount of argument that it would cause inconvenience to the public servant in charge of the weigh-bridge, who may have to come to weigh the vehicles at odd hours of the day and night, can prevail against this. Neither is it proper for the key of the weigh-bridge to be kept by someone other than the public servant in charge of the weigh-bridge.

For the aforesaid reasons the appeal is allowed, the conviction and sentence set aside and the fine of $450 will be refunded to the appellant.

Appeal allowed.

Solicitors: *Tay Leong Siak & Co.*

MUTHIAH v. NATESAN

[A.C.J. (Pawan Ahmad J.) June 13, 1973]
[Malacca — Civil Appeal No. 2 of 1973]

Limitation — Action on contract — Action not to be brought after expiration of six years from accrual of cause of action — Summons, statement of claim and all requisite fees paid for — Registrar signing summons after expiry of 6 years — When action is brought — Limitation Ordinance, 1953, s. 6.

In this case the appellant appealed against the judgment of the Sessions Court which had dismissed his claim on the ground that it was barred by limitation. The cause of action in this case accrued on June 17, 1963. The summons and statement of claim were presented at the Sessions Court on June 16, 1969. The payment of fees and all other formalities were duly complied with by the appellant on the same date, but the summons was signed by the Registrar of the Sessions Court only on June 17, 1969.

Held: in this case the appellant brought the action on the June 16, 1969 when he filed in the appropriate court the summons and statement of claim on the appropriate form and paid the requisite fee, and therefore his claim was not statute barred.

Cases referred to:-

(1) *Public Prosecutor* v. *Winston Chung Yin Chen* [1969] 1 M.L.J. 207, 208.

(2) *Boota Singh* v. *Isman bin Haji Ali* [1957] M.L.J. 127.

MAGISTRATE'S APPEAL.

P. Devadas for the appellant.

Thara Singh Sidhu for the respondent.

Pawan Ahmad J. (delivering oral judgment): This is an appeal by the appellant, who is the plaintiff in Malacca Sessions Court Civil Action No. 69 of 1969, from the decision of the Sessions Court which ruled that the action brought about by the plaintiff against the defendant for the recovery of the sum of $2,000 is barred by the statute of limitation.

Paragraph 4 of the statement of defence reads as follows:

"The defendant further says that in any event the plaintiff's cause of action did not accrue within 6 years before the commencement of this action and the defendant will rely upon the provisions of the Limitation Ordinance No. 4 of 1953."

Section 6 of the Limitation Ordinance provides that an action founded on a contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

Paragraph 3 of the statement of claim states that the cause of action accrued on 17th June, 1963. The summons and statement of claim was presented at the Sessions Court on 16th June, 1969. The payment of fees and all other formalities were duly complied with by the plaintiff on the same date, but the summons was signed by the Registrar of the Sessions Court only on 17th June, 1969.

Counsel for the defendant, in his submission before the Sessions Court, cited the case of *Public Prosecutor* v. *Winston Chung Yin Chen*[1] where Ibrahim Manan J. said:

"In my opinion, a writ of summons is not sued out or instituted in the High Court until all the requisite steps have been taken for its issuance out of the registry."

In that case what the court had to decide was the question as to the date when a writ of summons is sued out or instituted and not the question of limitation. In my view, that case therefore is of no assistance in deciding the question of limitation.

Counsel for the defendant also invited the court's attention to O. 6 r. 3 of the Subordinate Courts Rules, 1950, which reads as follows:

"The registrar shall examine the summons and, if it appears to be in proper form, and if the plaintiff shall have paid the appropriate fees (including the fees for service thereof), shall assign a serial number thereto, seal, sign and issue it, and deliver it to the bailiff for service. If the registrar is of opinion that the summons is not in proper form, he may reject it or direct that it be amended."

In my view, this rule again has no relevance on the question of limitation but merely sets out the procedure for the issue and service of the summons.

Counsel for the plaintiff in the court below conceded that the summons was sealed and signed on 17th June, 1969 and that the last day for the filing of the summons was 16th June, 1969. He maintained that so long as he has filed the summons on 16th June, 1969, the action had been brought within the period stipulated under section 6(1) of the Limitation Ordinance, 1953. In support of his contention, he invited the court's reference to the Law of Limitation by *Rustomji*. For the purpose of this appeal, the court will make reference to the 5th Edition of *Rustomji*. On pages 55-56 of this Edition it is stated:

"In the case of a plaint the period of limitation ceased to run on the day on which the plaint is actually filed in court; it is immaterial when the summons is served on the defendant. Limitation is checked from the day the plaint, appeal,

etc., is actually presented even though it is not then accepted by the court; and the fact that the plaint was registered on a later date does not affect the question of limitation. In other words, limitation is checked as soon as the plaint is presented to the proper officer and the fact that it was admitted and entered in the Register of Civil Suits after limitation ran out is immaterial. The suit is deemed instituted when the plaint is presented and not when the Collector's certificate under the Pensions Act, 1871 is filled.... An action is commenced when the plaint is filed although it is not duly signed or verified until subsequently."

Counsel for the defendant also cited the case of *Boota Singh* v. *Isman bin Haji Ali*.[2] In that case what the court was required to decide was whether the Limitation Ordinance ceases to run when the plaintiff requests the court clerk to prepare the summons or whether it continues to run until the summons is actually sealed and issued. There the plaintiff requested the court clerk to prepare the summons on 3rd August. The period of limitation expired on 15th August and the summons was sealed and issued on 19th August. The district judge held that the suit was instituted when the plaintiff requested the court clerk to prepare the summons on 3rd August and consequently ruled that the claim was not statute barred. The defendant appealed against the decision on the ground that the suit was not instituted within the meaning of section 3 of the Limitation Ordinance (Singapore Cap. 7). Section 3 of the Singapore Limitation Ordinance, as it was in the year 1957, reads as follows:

"Subject to sections 4 to 24, every suit instituted after the period of limitation prescribed therefor by the Schedule shall be dismissed, provided that limitation has been set up as a defence."

A distinction must be drawn between this section and our section 6(1) of our Limitation Ordinance. Section 6(1) envisages that "actions shall not be brought after the expiration of six years" whereas section 3 of the Singapore Ordinance envisages that "every suit instituted after the period of limitation... shall be dismissed." The expression "suit instituted" in section 3 of the Singapore Ordinance is synonymous with the words "action commenced" and Whyatt C.J., in allowing the appeal, ruled that the Limitation Ordinance continues to run until the summons is actually sealed and when the summons is sealed, it is deemed to be issued and the action is then commenced.

As I have stated above, there clearly is a distinction between the then Singapore Limitation Ordinance and our Limitation Ordinance, No. 4 of 1953. Under our Ordinance what the plaintiff is required to do is to bring about the action within six years from the date on which the cause of action accrued. He does so by filing in the appropriate court the summons and the statement of claim on the appropriate form and by paying the requisite fees. Once he has done this within the six year period, he is said to have brought the action within time. The sealing and the signing of the summons is entirely a matter for the court over which the plaintiff has no control and, if the court seals and signs the summons subsequently after the lapse of a few days, the fault for this can in no way be attributed to the plaintiff. In the present case, therefore, I must rule that the plaintiff by filing and presenting the statement of claim on 16th June, 1969, did so within the period of six years prescribed by section 6(1) of the Limitation Ordinance and as such the claim of the plaintiff is not statute barred.

For the aforesaid reasons the appeal will be allowed and the order of the Sessions Court dismissing the action on the ground that it was statute barred will be set aside. The costs of the appeal and the costs in the court below will be paid by the respondent to the appellant.

The action will be remitted to the Sessions Court for trial before another president on the other issues raised in the pleadings.

Appeal allowed.

Solicitors: *Devadas & Co.; Sault, Thara & Co.*

MALACCA MUNICIPALITY v. NG LEONG WAH

[R.Cr.J. (Pawan Ahmad J.) July 23, 1973]
[Malacca — Criminal Revision No. 5 of 1973]

Criminal Law and Procedure — Order for payment of compensation if complaint was "frivolous" or "vexatious" — Court must record reasons for making order — Whether order can be made against Government department or public authority which undertakes a prosecution — Criminal Procedure Code (S.S. Cap. 21), s. 185.

In this case the Malacca Municipality had instituted proceedings against the accused. Subsequently the prosecution was withdrawn and the accused was acquitted and discharged. Counsel for the accused applied for compensation and the learned President, Sessions Court, merely made the order "compensation of $25 awarded to the defendant" without setting out any reasons.

Held: (1) as the learned president had not recorded his reasons for making the order, the order must be set aside;

(2) an order for compensation can only be made if the court is satisfied that the complaint was frivolous or vexatious and the court can only come to a finding as to whether a complaint, is frivolous or vexatious, after having heard evidence on oath and not merely upon submissions by the parties;

(3) there is no provision for making any order of compensation under section 185 of the Criminal Procedure Code (Cap. 21) against a prosecuting department whose duty it is to prosecute offences disclosed on complaints made or information supplied by its officers or members of the public. Orders for compensation under section 185 can be made only against individuals, be they public officers or members of the public, and not against a Government department or public authority which undertakes a prosecution.

CRIMINAL REVISION.

Tan Lip Yip for the Malacca Municipality.

Pawan Ahmad J. (delivering oral judgment): Magistrate's Court Summons Case No. 1550/71 (*Malacca Municipality* v. *Ng Leong Wah*) was withdrawn by the prosecution on 1st December, 1971 and upon such withdrawal, the accused was acquitted and discharged. Counsel for the accused then made application for compensation under the provisions of section 185(1) of the Criminal Procedure Code (S.S.) (Cap. 21) which reads:

"If in any case the court acquits the accused and is of opinion that the complaint was frivolous or vexatious, it may, in its discretion, either on the application of the accused or on its own motion order the complainant or the person on whose information the complaint was made to pay to the accused, or to each or any of the accused where there are more than one, such compensation, not exceeding twenty-five dollars, as the court thinks fit.

Provided that the court —

(a) shall record and consider any objections which the complainant or informant may urge against the making of the order: and